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WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PERRY MADSEN,

Plaintiff,

v.

JUDGE PHILIPS, et al.,

Defendants.

CASE NO. C99-1805C

ORDER DENYING SERVICE AND  
GRANTING LEAVE TO AMEND

The court, having reviewed the complaint and file herein, does hereby find and Order:

(1) Plaintiff Perry Madsen, proceeding pro se and informa pauperis, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is an inmate at the Kent Correctional Facility in Kent, Washington, and seeks to challenge the duration of his sentence. This claim not cognizable in a § 1983 action. Habeas corpus is the exclusive federal remedy when a prisoner seeks to challenge either the fact or the duration of his confinement. Accordingly, the complaint as written is subject to summary dismissal for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A.

(2) Moreover, the complaint names defendants who are either immune from suit under § 1983 (Judge Philips), or not amenable to suit under § 1983 because they are not state actors (the defense attorneys).

(3) Accordingly, the Court declines to order that the complaint be served on defendants. Plaintiff may file an amended complaint curing the above-mentioned defect within thirty (30) days of the date of this Order. The amended complaint must contain the same case number as this one, and

ORDER DENYING SERVICE AND  
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1 sufficient copies must be provided for service on each of the defendants. Should an amended complaint  
2 not be timely filed, the action will be dismissed.

3 (4) The Clerk is directed to send plaintiff a copy of this Order and the appropriate §1983 forms  
4 so that he may file an amended complaint.

5  
6 DATED this 4 day of February 2000.

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9 RICARDO S. MARTINEZ  
United States Magistrate Judge